RECENT IMPORTANT DECISIONS

BANKRUPTCY—TRUSTEE'S RIGHT TO ENFORCE STOCKHOLDER'S STATUTORY LIABILITY.—Petitioning stockholder presented his claim against the estate of a bankrupt corporation for supplies furnished. The trustee, by a species of counter-claim, sought to enforce petitioner's statutory liability under Hurd's Rev. St. Ill. 1908, c. 32, §§16 & 18, which make corporate officers jointly and severally liable for corporate debts in excess of capital stock and for those incurred before the capital stock is subscribed. *Held,* that the statutory liability was not a right of action "arising on contract" within subdivision 6, §70 a of the Act of 1898. Twenty days were granted for creditors to enforce the liability. *In re Beachy & Co.* (1909),—D. C., E. D. Wis.—, 170 Fed. 825.

Ordinarily the trustee acquires only such rights as were held by the bankrupt on the day of adjudication. *In re Pease,* 4 Am. B. R. 578; *in re Burka,* 104 Fed. 326, 5 Am. B. R. 12. In the principal case the corporation is considered as estopped from raising the question of petitioner's fraud. Hence its assignee could acquire no such right. A trustee may sue for unpaid subscriptions, however. *Allen* v. *Grant,* 122 Ga. 552, 14 Am. B. R. 349. A similar question arose in *Stocker* v. *Davidson,* 74 Kan. 214, in which the assignee sues in a state court to enforce the stockholder's "double liability" under the Kansas statute, the court considering the liability as one "arising on contract" within subdivision 6, §70 a *supra.* While the Kansas statute specifically makes funds recovered under such laws, a part of the corporate assets, the language is for the most part similar. The decision above would seem to require a separate suit by the creditor, independent of the bankruptcy proceedings, as in *In re Crystal Spring Bottling Co.,* 96 Fed. 945.

BILLS AND NOTES—FAILURE OF CONSIDERATION—WHEN MAKER IS ESTOPPED FROM PLEADING IT.—Defendant executed to a bank, a note in renewal of two other notes held by the bank, one of which he recognized as his own, and the other purporting to have been signed by him he had no knowledge of making, but upon inquiry was assured by the cashier that it was genuine and made no objection for eight months when the bank went into the hands of a receiver. In this action to recover the amount of the note, it is *held* (WEAVER, J., dissenting) that the ground of partial failure of consideration, in that the second note was forged, was no defense. *First State Bank of Corwith* v. *Williams* (1909), — Ia. —, 121 N. W. 702.

As a general rule any holder of negotiable paper with notice of defect in consideration, as well as any holder who is in privity with the original payee takes the paper subject to such defense. 2 RANDOLPH COMM. PAPER, §556 and cases cited. When a person's signature is forged as maker, acceptor, drawer or indorser, as a general rule it is a mere nullity as to him. DANIEL NEG. INST., ed. 5, § 1351. Before the holder has changed his relations to the paper or any one has dealt with it upon the faith of his admissions we know

of no principle of law which prevents forgery from being pleaded. *Woodruff* v. *Munroe,* 32 Md. 158. Where a party, however, admits his signature, he will be estopped from setting up that it is a forgery. 2 RANDOLPH COMM. PAPER, §§1775-1781. One who gives a note with full knowledge of facts which would relieve him from liability for a portion of the debt represented in such note cannot in defense to an action thereon subsequently set up those facts. *Atlanta Consolidated Bottling Co.* v. *Hutchinson,* 109 Ga. 550, 35 S. E. 124; *Hogan* v. *Brown,* 112 Ga. 662, 37 S. E. 880; and to the same effect *Duncan* v. *Allender,* 23 Ky. Law. 254, 62 S. W. 850; *Skordal* v. *Stanton,* 89 Minn. 511, 95 N. W. 449. It would seem from the cases cited which appear to support the majority opinion, that the defendant's defense was barred by his failure to repudiate the consideration, and that the case was correctly decided.

BILLS AND NOTES—INSTRUMENT PAYABLE AFTER DEATH—WHETHER VALID OBLIGATION OR OF A TESTAMENTARY CHARACTER.—Plaintiff brings suit on a writing obligatory of the following form: "To my Executor or Administrator. Pay to the order of Florence E. Sullivan six hundred dollars without intrust. Non-negotiable. Emily M. Junkins (Seal.) It being for work in house and for manual labor on my farm. Emily M. Junkins (Seal)." *Held,* that there can be a recovery on the instrument sued on as it creates a debt in praesenti. *Junkins* v. *Sullivan* (1909), — Md. —, 73 Atl. 265.

The court in arriving at its decision draws a very clear distinction between the principal case and *Cover* v. *Stem,* 67 Md. 449, 10 Atl. 231, 1 Am. St. Rep. 406. In the latter case defendant's testator in his life time executed an instrument in the following form: "Md. September 4th, 1884. At my death my estate or my executor pay to July Ann Cover the sum of three thousand dollars," and the court held it was a legacy and not an indebtedness. To make a valid obligation there must be terms employed to create a debitum in praesenti. *Cover* v. *Stem,* supra. The relation of debtor and creditor must be created and subsist in the life of the parties to the instrument, though the time of payment may be deferred until after the death of one of the parties. SHEP. TOUCH. 31 L. L.* pp. 368, 369; STORY, PROMISSORY NOTES, §27. If the obvious purpose of an instrument is not to take place till after the death of the person making it, it shall operate as a will. *Habergham* v. *Vincent,* 2 Ves. Jr. *p. 231. A note, executed, delivered, and accepted in the life time of the maker, but made payable at or after his death is not of a testamentary character but an absolute instrument. *Carnwright* v. *Gray et al.,* 127 N. Y. 92; *Bristol* v. *Warner,* 19 Conn. 7; *Conn* v. *Thornton,* 46 Ala. 587; *Jones* v. *Morgan,* 13 Ga. 515. The acknowledgment of the indebtedness by adding the words, "it being for work in house and for manual labor on my farm," and that it is due implies a promise to pay the note on demand in the absence of other direction as to the time of payment. *Hegeman* v. *Moon et al.,* 131 N. Y. 462. The principal case is supported by *Hegeman* v. *Moon,* supra; *Price* v. *Jones,* 105 Ind. 543, 5 N. E. 683, 55 Am. Rep. 230, and *Martin* v. *Stone,* 67 N. H. 367, 29 Atl. 845.